IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5362 OF 2004

Harish Shambulal Hariani,
Adult, Occ: Landlord,
r/o 112, Veer Vithaldas
Chandan Street, Mandvi,
Mumbai-400 003. .... Petitioner

- Versus -

Pundalik Anna,
Adult, Occ: Business,
r/o c/o Mazgaon Mansion,
153/55, Dr. Mascarenhas
Road, Mazgaon,
Mumbai-400 010. .... Respondent

Ms S. Mutalik for the Petitioner.

Shri A.H. Namavati for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 22, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order of the revisional Court and further the fixation of the standard rent of the suit premises holding that the application for fixation of the standard rent was maintainable. The trial Court has dismissed the application on the ground that no such application was

maintainable as it was beyond the period of 30 days from the date of service of the notice under Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the Rent Act".

3. While fairly conceding that the challenge on the ground of non-maintainability of the application on the ground of delay in filing the application is not available to the petitioner at this stage, the learned Advocate for the petitioner has restricted his challenge to the impugned order on the ground that the revisional Court could not have proceeded to decide about the quantum of the standard rent once the trial Court had not dealt with the said issue, having dismissed the application merely on the ground that the said application was not maintainable.

4. It is not in dispute that the trial Court had not dealt with the matter on merits as regards the quantum of the standard rent and has dismissed the application purely on the preliminary objection regarding non-maintainability thereof on account of the same being beyond the period of 30 days from the date of receipt of the notice under Section 12(2) of the Rent Act. It is also not in dispute that the revisional Court while setting aside the order proceeded to dispose of the matter on merits regarding the quantum of the standard

rent. It is well-settled law that the revisional Court having found the trial Court having dismissed the application purely on preliminary ground, cannot proceed to decide the matter on merits. If the revisional Court finds the trial Court having dismissed the matter purely on preliminary objection and finds the dismissal to be contrary to the provisions of law, the revisional Court would be certainly justified in remanding the matter while setting aside the order of the trial Court but not to proceed to decide the matter on merits. Even otherwise, the scope of the powers of the revisional Court are limited to ascertain about the propriety and the legality of the order under challenge and not to deal with the merits of the case. The law being well-settled in that regard, the petitioner is justified in contending that the revisional Court could not have proceeded to decide the matter on merits in relation to the quantum of the standard rent and, therefore, the petition is bound to succeed on the said ground.

5. The petition, therefore, succeeds. The impugned order, so far as it decides the quantum of the standard rent, is hereby set aside and the matter is remanded to the trial Court to decide the issue regarding the standard rent payable by the respondent. However, meanwhile and till the decision is arrived at, the interim arrangement as ordered by the impugned order to

continue. The rule is made absolute in above terms with no order as to costs.